BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.18565 of 2014
and
M.P(MD)No.1 of 2014

M.Ramanujam ... Petitioner

Vs.

1. The Treasury Officer,
   District Treasury,
   Sivagangai, Sivagangai District.

2. The Assistant Treasury Officer,
   Sub-Treasury,
   Manamadurai Taluk, Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent i.e., the Assistant Treasury Officer, Manamadurai relating to memo No.RC/92414, dated 16.10.2014 and quash the same and consequently, direct the respondents to make payment of the deducted amount within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.S.Kumar
Additional Government Pleader

ORDER

This writ petition has been filed, challenging the order passed by the second respondent the Assistant Treasury Officer, Manamadurai, relating to memo No.RC/92414, dated 16.10.2014 and quash the same and consequently, direct the respondents to make payment of the deducted amount.

2.The learned counsel for the petitioner submits that the petitioner was allowed to retire on the date of superannuation (i.e) on 30.06.2005, as Village Administrative Officer in Vallakulam Group, Ilayankudi Taluk, Sivagangai District, as per the proceedings No.RC/A2/4854/2005, by the Revenue Divisional Officer, Sivagangai. Further, he submits that it was informed by the Assistant Treasury

Officer, Manamadurai Taluk, vide memo No.RC/924/14, dated 16.10.2014 that the revised pension of Rs.4,163/- fixed by the Tahsildar, Ilayankudi, was not correct and therefore a sum of Rs.58,424/- has to be recovered from the petitioner. He received the said memo only on 13.11.2014. But, the Assistant Treasury Officer, Manamadurai has recovered a sum of Rs.5,000/- from the petitioner's pension for the month of October 2014. It was informed that the recovery will be continued till the total amount of Rs.58,424/- was collected.

3.The learned Additional Government Pleader appearing for the respondents submits that on 07.08.2012, the Tahsildar, Illayankudi has fixed the petitioner's Grade Pay Rs.4,200/-. Accordingly, the petitioner was paid in the scale of pay of Rs.300+4200/- Grade pay. The said fixation was objected by the Regional Audit Officer saying that the petitioner was eligible to get Rs.2,800/- as Grade pay as per clarification of the Commissioner for Revenue Administration vide letter No. server (1)/ 47604/2012, dated 02.11.2012. Accordingly, he was eligible to get Rs.3,277/- as pension instead of Rs.4,163/- per month. As a result, a sum of Rs.58,424/- was considered as over payment and directed to revise his pension at the rate of Rs.3,277/- and to recover the excess payment.

4.He further submits that in pursuance of the audit report, the second respondent had issued a memo in Rc.No.924/2014 A1, dated 16.10.2014, informed the petitioner that the Tahsildar, Illanyankudi had wrongly fixed his Grade Pay and the excess amount of Rs.58,424/- has to be recovered and the same was challenged in this present writ petition. It is pertinent to note that as per letter No.63305/Pay led/2010-1, dated 18.11.2010, Finance (PC) Department that if the revised selection/Special Grade Scales of Pay indicated in the Annexure-1, happens to be higher than the First Level/Second Level promotion post then in such cases only the Revised Selection Grade/Special Grade Scales of Pay should be restricted to the level of their first level and second level promotion post respectively. In fact the petitioner had retired as Selection Grade Village Administrative Officer and his next promotional avenue is Accountant/Assistant and the scale of pay to the post of Assistant was 5200-20200+2800 as Grade pay, but the Tahsildar has wrongly revised the petitioner's scale of pay at the rate of 9,300-34,800+4,200 as Grade Pay. After the defects pointed out in the audit report, the second respondent has taken proper steps to recover the excess amount and re-fixed his correct scale of pay thereby issued the impuged memo, which is legal and in accordance with law.

5.The learned counsel appearing for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal Vs. State of Uttarakhand***, reported in ***2012(8) SCC 417***, referring that the excess amount was the tax payer amount and the employee cannot be taken advantage of wrong fixation by the officer and it was to be recovered from the employee and therefore submitted that there was nothing wrong in issuing the impugned order.

6.The Honourable Supreme Court in the case of **State of Punjab Vs.Rafiq Masih (White Washer)** reported in **2015 (4) SCC 334**, has categorically held that the action of the State in ordering recovery from an employee would be an order of sustainable, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer to recover the amount as recovered, having a harsh and arbitrary effect on the employees. While deciding the above case, the Honourable Supreme Court has categorized few situations wherein the recoveries by the employers would be impermissible in law and in paragraph No.18 it has been held as follows:-

> *"18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is used.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

7.Following the aforestated principles, this Court finds that the impugned order, dated 16.10.2014 is bad in law and thereby liable to be set aside.

8.In fine, the Writ Petition is allowed, setting aside the impugned order, dated 16.10.2014 and directing the respondents to refund the recovered amount to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Treasury Officer,
   District Treasury,
   Sivagangai,
   Sivagangai District.

2. The Assistant Treasury Officer,
   Sub-Treasury,
   Manamadurai Taluk,
   Sivagangai District.

+ 1 CC TO Mr.S.VISVALINGAM, ADVOCATE IN SR No. 94520
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 94744

SSS
TE/KKR/SAR-1 : 23/03/2018 : 4P/5C

ORDER MADE IN
W.P(MD)No.18565 of 2014 and
M.P(MD)No.1 of 2014
22.12.2017